

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 107**

[Docket No. HM-208B, Notice No. 95-3]

RIN 2137-AC58

**Hazardous Materials Transportation Registration and Fee Assessment Program****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** RSPA is proposing changes to the current registration and fee assessment program for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce under the Hazardous Materials Regulations. The proposed changes would increase the annual registration fee for a number of persons by distinguishing between large, medium, and small entities that conduct operations in one or more of the several categories for which registration is required. The intended effect of the proposed changes is to provide a sound basis for funding the national emergency response training and planning grant program.

**DATES:** *Written comments:* Comments must be received on or before April 3, 1995.

*Public hearing:* A public hearing will be held beginning at 9:00 a.m., February 16, 1995. Persons desiring to make oral statements at the hearing should notify the Research and Special Programs Administration (RSPA) Docket Clerk by telephone (202) 366-5046 or in writing by February 13, 1995.

**ADDRESSES:** *Written comments:* Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket (HM-208B) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Public dockets may be viewed between the hours of 8:30 a.m. and 5:00 p.m.,

Monday through Friday, except Federal holidays.

*Public hearing:* The public hearing will be held in the Auditorium of the Federal Aviation Administration Building located at 800 Independence Avenue, SW., Washington, DC 20491. Mail written requests to speak at the hearing to: Docket Clerk, Room 8421, Office of Hazardous Materials Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. For further information on public hearing procedures, see Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Joan McIntyre, Office of Hazardous Materials Standards, (202) 366-8553, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Public Hearing Information**

Each request to speak at the public hearing must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer and reporter prior to the oral presentation. Hearings may conclude before 5:00 p.m. if all persons wishing to give oral comments have been heard. To confirm plans to attend, contact Ms. Joan McIntyre at (202) 366-8553 by February 15, 1995.

**II. Background**

On July 9, 1992, RSPA published a final rule under Docket HM-208 [57 FR 30620], establishing a national registration and fee assessment program, as required by 49 U.S.C. 5108, for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons currently subject to the registration program are required to annually file a registration statement with RSPA and pay a total annual fee of \$300.00, of which \$250.00 is to fund a nationwide emergency response training and planning grant program for States, local governments, and Indian tribes and \$50.00 is to offset Department of Transportation (DOT) processing costs. The registration fee of \$250.00 is the minimum amount permitted under the statute to be collected for funding the Interagency Hazardous Materials Public Sector

Training and Planning Grants Program. RSPA estimates that approximately 25,000 persons will register for the current (1994-1995) registration year, thereby generating \$6.25 million. This amount is not sufficient to carry out the national emergency response training and planning grant program at the level contemplated by Congress.

**III. Scope of the Current Registration Program****A. General**

The current registration program is focused on persons who are under a statutory obligation to register with RSPA. Under 49 U.S.C. 5108, each person who carries out one or more of the following activities must file a registration statement with RSPA and pay an annual registration fee:

(1) Transports or causes to be transported or shipped in commerce highway-route controlled quantities of Class 7 (radioactive) materials;

(2) Transports or causes to be transported or shipped in commerce more than 25 kilograms (55 pounds) of Division 1.1, 1.2, or 1.3 (Class A or Class B explosive) material in a motor vehicle, rail car, or freight container;

(3) Transports or causes to be transported or shipped in commerce more than one liter (1.06 quarts) per package of a hazardous material which has been designated by RSPA as extremely toxic by inhalation;

(4) Transports or causes to be transported or shipped in commerce a hazardous material in a bulk packaging, container, or tank if the packaging, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(5) Transports or causes to be transported or shipped in commerce a shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

In addition, RSPA holds authority under § 5108 to require registration by each person who offers for transportation or transports any form or quantity of a hazardous material in commerce, and each person that manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packagings that are represented, marked, certified, or sold for use in the transportation in commerce of hazardous materials. At this time, RSPA is not proposing to expand the registration requirement to such persons.

### B. Foreign Offerors

Foreign offerors are included in the definition of "persons" who are subject to the registration requirement to the extent that they engage in any of the activities covered by the registration program. However, because of the potential for reciprocal actions by other governments, and significant problems associated with informing and identifying the parties concerned, RSPA delayed application of the registration requirement to these entities until July 1, 1996. See 49 CFR 107.606(f). Subsequently, section 104 of Public Law 103-311, enacted August 26, 1994, amended 49 U.S.C. 5108(a) by adding a new subparagraph that reads as follows:

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

In this notice, RSPA proposes to make permanent the exception currently provided in § 107.606(f). However, in proposed § 107.606(a)(6), the general exception would be limited to persons who offer hazardous materials for transportation to the United States from a foreign country that does not impose a registration statement or fee payment requirement on a person domiciled in the United States who offers hazardous materials for transportation to that country.

In § 107.606(b), RSPA explains that persons domiciled in countries that enforce a registration statement or fee payment requirement shall file a registration statement and pay the annual fee upon a positive determination made by RSPA's Associate Administrator for Hazardous Materials Safety, the U.S. Competent Authority, that the other country's requirement is prejudicial to persons domiciled in the United States. The U.S. Competent Authority's determination would be communicated directly to the other country's Competent Authority, and it would be published in the **Federal Register**. No later than 60 days following publication in the **Federal Register** of that Competent Authority determination, offerors domiciled in the other country would be required to file a registration statement and pay the annual fee. If such an offeror were not registered, it could not offer a hazardous

material for transportation from that country to the United States.

### IV. Fee Schedule Under the Current Program

Under 49 U.S.C. 5108 the amount of the registration fee which may be collected from a person required to register with RSPA may not be less than \$250.00 nor more than \$5,000.00. The current registration fee is \$250.00 for all persons required to be registered with RSPA, plus a processing fee of \$50.00. All registrants, regardless of the size of their company, their level of income, or the extent to which they engage in hazardous materials transportation activities, currently pay the same registration fee.

### V. Funding Shortfalls and Compliance Enforcement

#### A. Training and Planning Program Funding Shortfall

For the public sector training and planning program, 49 U.S.C. 5116 and 5127 provide an annual authorization in the amount of \$18.975 million from 1993 through 1998. The authorization allocates \$5 million for planning grants; \$7.8 million for training grants; \$1 million for development of a national curriculum; \$3.2 million for monitoring and technical assistance by DOT and other Federal departments and agencies; \$250,000 for a hazmat employee training grant program; and up to 10% of the amount made available from the registration fee account (or a maximum of \$1.725 million) for the administrative costs of the program.

The planning and training grants awarded to States and Indian tribes, as well as expenditures for development of the training curriculum and other elements of the program, are drawn from an account established by the Secretary of the Treasury for the deposit of registration fees. In the registration years ending in June 1993 and 1994, registration fees collected and deposited into that account under the registration program amounted to \$6.8 million and \$6.7 million, respectively. An estimated \$6.25 million in registration fees will be deposited during the current registration year ending in June 1995.

Currently, annual registration fees do not provide all of the \$12.8 million authorized for training and planning grants to States and Indian tribes or the amounts authorized for other purposes. This funding shortfall compelled the Department to reduce grant allocations to the States and Indian tribes by approximately 40%. Increased registration fees will permit RSPA to substantially improve support of

hazardous materials emergency response planning and training to the extent contemplated by Congress.

#### B. Outreach Efforts, Compliance, and Enforcement

RSPA has conducted an extensive outreach effort to increase awareness of the registration requirement. Over 400,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. Those mailing campaigns targeted, among others, more than 46,000 carriers and shippers identified by the Federal Highway Administration's (FHWA) Office of Motor Carriers; more than 22,000 generators and 13,000 transporters of hazardous waste, as identified by the Environmental Protection Agency; nearly 6,000 shippers identified in RSPA's Hazardous Materials Incident Reporting System; approximately 4,000 holders of hazardous materials exemptions issued by RSPA; thousands of shippers and carriers that constitute the membership of several trade associations having an interest in the transportation of hazardous materials; and numerous State agencies. During this outreach, RSPA has cross-checked its registrations data base with each of the other lists provided by State agencies, and others, to identify potential cases of non-compliance. The registration program has been publicized in trade magazines and industry newsletters. Three supplemental notices have been published in the **Federal Register** advising the public of registration requirements. 58 FR 10985, February 23, 1993; 58 FR 26040, April 29, 1993; and 59 FR 22132, April 29, 1994. Compliance enforcement with the registration requirements was a key element of ROADCHECK-93, a nationwide inspection effort sponsored by the FHWA. Of 2,300 placarded trucks that were checked for proof of registration during that inspection, 88% were registered and had proof on board. Of the 12% that did not have proof on board, 80% were already registered. The Federal Railroad Administration (FRA) has publicized the registration program through technical bulletins and informational brochures distributed to their regional offices and all FRA inspectors. Approximately 60 Federal enforcement actions have been initiated throughout the United States, and eighteen State enforcement agencies have issued more than 250 citations for failure to register. Finally, during May, 1994, RSPA's Associate Administrator for Hazardous Materials Safety wrote to each State grant recipient to request

their assistance in identifying persons who have not registered, but who are required to do so.

As an alternative to increasing registration fees, RSPA recently proposed that offerors and transporters verify the registration status of each other before transportation begins. See Notice of Proposed Rulemaking in Docket HM-208A, 59 FR 15602, April 1, 1994. Most commenters opposed this proposal. Commenters overwhelmingly believed that Federal and State agencies should be responsible for enforcing the regulations, not industry. Logistical problems, administrative burdens, and increased costs were cited by commenters opposing this proposal. RSPA did not adopt the proposal in the final rule. 59 FR 32930, June 27, 1994.

Based on our outreach, our compliance efforts, and the results of ROADCHECK-93, RSPA believes the compliance rate to be approximately 90%. A significant increase in the campaign to inform shippers and carriers through education and stronger compliance is not expected to result in a sufficient number of new registrants to make-up the current funding shortfall. At the same time, 100% compliance remains the goal, and RSPA invites the submission of information which may be used to identify and contact unregistered offerors and transporters of hazardous materials. Suspected violations of the registration requirements may be brought to the attention of Federal or State enforcement agencies and specifically may be brought to RSPA's attention by calling RSPA's Registration Program Office at (202) 366-4484.

#### **VI. Factors Taken Into Consideration in Developing the Proposals of This NPRM**

Within the range of \$250.00 to \$5,000.00, 49 U.S.C. 5108 allows RSPA to base the amount of the registration fee on one or more of the following factors:

- (1) The gross revenues from the transportation of hazardous materials;
- (2) The types of hazardous materials transported or caused to be transported;
- (3) The quantities of hazardous materials transported or caused to be transported;
- (4) The number of shipments of hazardous materials;
- (5) The number of activities which a person carries out for which a filing of a registration statement is required;
- (6) The threat to property, persons, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported;

(7) The percentage of gross revenues which are derived from the transport of hazardous materials;

(8) The amount of funds which are made available to carry out the emergency response planning and training grant program; and

(9) Such other factors as RSPA considers appropriate.

Given the relatively narrow permissible range of the registration fee (between \$250.00 and \$5,000.00), RSPA believes that the fee levels should be as simple and as straightforward as possible so as to be easily understood, administered, and enforceable. RSPA also believes that the fee levels should consider the comparative risks that may be posed by the types of activities covered by the registration requirement, to which emergency response planning and training are addressed. This includes the difference in the level of activity between small and large companies as well as any differences between the "types of hazardous materials transported or caused to be transported"—e.g., a highway route controlled quantity of radioactive materials, or a shipment of 5,000 pounds or more of one hazardous material for which placarding is required.

In trying to strike a balance between equity and efficiency considerations, and in trying to make the registration process as clear and as administratively simple as possible, RSPA has tried to link the registration fee to information which is readily available to potential registrants, which can be verified by inspection and enforcement personnel, and which bears some relationship to the risk or magnitude of a person's involvement in hazardous materials transportation activities. Although the registration statement and fee level categories are excepted from the Paperwork Reduction Act by 49 U.S.C. 5108, RSPA has sought to avoid any approach which would entail a large recordkeeping and accounting burden on industry and the government. For example, basing the annual registration fee on a person's annual gross revenue, or on the percentage of gross revenue derived from the transportation of hazardous materials, could require significant changes in the way paperwork tracking and accounting procedures are handled by a company. Further, this information would be subject to verification in order to ensure that a person's annual fee was in fact commensurate with annual gross revenue, or with the percentage of gross revenue, derived from the company's transportation of hazardous materials.

One commenter on the proposal under HM-208A, the National Industrial Transportation League (NITL), stated that, if the universe of prospective registrants is smaller than originally estimated, an equitable increase in fees to cover a deficiency in funds would be less costly and burdensome than requiring offerors and transporters to verify each other's registration status. NITL believed that this deficiency could be eliminated by increasing the flat fee or by implementing a graduated fee schedule with registrants who are significantly more involved in the transport of hazardous material bearing a proportionately larger share of the increase.

At its annual meeting on July 23-28, 1994, the National Conference of State Legislatures (NCSL) again expressed its support of the action taken by Congress in the 1990 amendments to the Hazardous Materials Transportation Act (now replaced by 49 U.S.C. 5101 *et seq.*) to clarify government's regulatory roles and responsibilities; establish uniform standards for regulation; improve the existing preemption determination procedure; provide increased financial support for inspection, enforcement, training and response activities; guarantee State fiscal autonomy; and increase overall program coordination and data collection. NCSL also expressed its concern that the current funding mechanism for Federal grants to State training and emergency response activities is deficient. These concerns include unreliable appropriations; insufficient receipt of registration fees; high administrative costs; and lack of collection enforcement.

#### **VII. Proposed Fees To Be Assessed for Funding the National Emergency Response Training and Planning Grant Program**

In order to adequately fund the training and planning grant program, RSPA seeks, through this rulemaking action, to collect an amount equal to the annual funding authorization of \$18.975 million. RSPA believes that this is best accomplished by proposing fee levels that range from the statutorily mandated minimum (\$250.00) to the mandated maximum (\$5,000.00), depending on the type, quantity, and the manner in which hazardous materials are offered for transportation or transported.

RSPA is proposing to establish a graduated fee schedule based on the type of hazard posed and the quantity of material offered for transportation or transported during the prior calendar year. Any person registering for a registration year subsequent to a year in

which it did not offer or transport hazardous material of the type, and quantity, for which registration is required would pay the minimum registration fee of \$250.00, plus the \$50.00 processing fee, for a total fee of \$300.00.

RSPA believes that this regulatory approach provides fee levels which broadly address many of the factors contained in 49 U.S.C. 5108. Thus, it addresses the types and quantities of hazardous materials transported or caused to be transported; the threat to property, persons, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported; gross revenues from the transportation of hazardous materials—to the extent that these revenues are a function of hazardous materials transportation-related activity; and the need to adequately fund the mandated training and planning grant program.

In addition, the proposal provides a reasonably fair and equitable solution to the great disparity between many small companies who are engaged in the shipment and transportation of hazardous materials, and large companies which annually manufacture, offer and transport thousands of tons of hazardous materials. RSPA is also confident that the revised fee structure would provide a sound basis for the funding and continued integrity of the emergency response training and planning grant program at a level authorized by law.

## VIII. Discussion of Proposed Fee Levels

### A. General

Under this proposal, all persons currently required to file a registration statement with RSPA would continue to be assessed, at a minimum, a registration fee of \$250.00, plus a processing fee of \$50.00, for a total of \$300.00. In addition, offerors and transporters who handle quantities of hazardous materials that pose a greater hazard potential would pay higher registration fees, up to \$5,000.00, plus the \$50.00 processing fee, for a total of \$5,050.00.

The proposed fee schedule is a tiered system that follows the mandatory registration filing criteria specified in 49 U.S.C. 5108 and reflects the hazard potential posed by various transportation activities. The complete fee schedule appears in the table in § 107.612 later in this document. For Class 7 (radioactive materials), a total annual fee of \$5,050.00, the maximum permitted by § 5108, is assessed for transportation of any highway route

controlled quantity. For explosives and for poison inhalation hazard (PIH), Zone A, materials there is a three-tiered sub-system of fees. The tiered fees, including the \$50.00 processing fee, are \$5,050.00 for larger quantities, \$2,550.00 for intermediate quantities, and \$300.00 for smaller quantities.

The schedule of registration fees for hazardous materials in bulk packagings is keyed to the number of *different* bulk packagings used during the year. As used in the Table in § 107.612, “different” bulk packagings refers to bulk packagings that are separately identifiable through permanent markings, serial numbers, or the like. Fees would be incrementally assessed based upon the number of different bulk packagings, including tank cars, cargo tank motor vehicles, portable tanks (e.g., IM-101/102), hopper vehicles, and hopper cars. Total annual fee levels would be based, in three increments (\$5,050.00, \$2,550.00, and \$500.00), upon the number of different bulk packagings offered for transportation or transported during the prior calendar year.

Finally, an annual registration fee of \$250.00, the minimum allowed by § 5108, plus the \$50.00 annual processing fee, for a total of \$300.00, is assessed for the transportation of 5,000 pounds or more of aggregated non-bulk packages of hazardous materials for which placarding is required, and for persons not engaged in any of the higher fee activities in the prior calendar year.

Persons who perform both offeror and carrier functions would be assessed fees based on the full scope of their transportation activities. However, no person would be required to pay more than the highest single annual fee associated with that person's operations, as specified in the Registration Fee Table in § 107.612(a).

The following are hypothetical examples of total annual fees payable by persons who, based upon their prior calendar year hazardous material transportation activity, are required to file a registration statement:

(1) A shipper that offered eight or more different tank cars would be assessed a total annual fee of \$5,050.00.

(2) A carrier that transported only eleven different cargo tank motor vehicles would be assessed a total annual fee of \$500.00.

(3) A shipper that offered fifteen different cargo tank motor vehicles and 75 different Class 106 multi-unit tank car tanks (nominal water capacity of 2,000 pounds) loaded with a PIH, Zone A, material would be assessed a total annual fee of \$2,550.00.

RSPA believes this simplified distinction between large, medium, and small entities achieves the same level of equity as may be achieved by more complex calculations, such as the determination of revenue ton-miles or total number of shipments. The bulk transportation fee categories also would be mutually exclusive (e.g., a person that offers seven tank cars and 23 cargo tank motor vehicles would be assessed fees as a medium-size entity, since neither category by itself results in a classification as a large entity).

The requirement to register, and the amount of the fee, are based upon transportation that occurs to, from, or between points within the United States. Thus, even though a foreign motor carrier's fleet may comprise a large number of cargo tank motor vehicles, the carrier's registration fee level in this category is based upon the number of different cargo tank motor vehicles actually used during the prior year for hazardous materials transportation to, from, or between points within the United States.

Although the proposed fee schedule loses some of the simplicity of the current system, RSPA is proposing these changes in the interest of striking a balance between equity considerations, minimizing the impact on smaller businesses, and insuring the adequacy of funding for the emergency response training and planning grant program. In addition, it is important to recognize that the emergency response planning and training program focuses upon those situations involving materials presenting the greatest hazard potential. Accordingly, RSPA believes scaled registration fees should be applied in such a way that the highest fees are paid by persons who offer or transport those materials.

RSPA welcomes comments on the proposed graduated registration fee levels and the thresholds which trigger the increase in fees, as well as on any other factors that might be considered as the basis for the assessment of registration fees. For example, should there be more (or fewer) subdivisions in any of the five (5) categories of activities for which registration is required, and what should be the registration fee for each subdivision? Alternatively, should there be a progressive increase in the registration fee associated with an increase in activity (e.g., \$250.00 for each tank car shipment—not to exceed \$5,000.00 per year)?

### B. Possible Expansion of the Registration Fee Base

The regulatory evaluation prepared in support of this rulemaking action

considered an alternative that would expand the scope of coverage of the registration program. Specifically, within this alternative, RSPA evaluated the following options:

- (1) Include all shipments (bulk and non-bulk) for which placarding is required.
- (2) Include all shipments (bulk and non-bulk) for which placarding is required, except for certain transportation by a private carrier exclusively for agricultural purposes (i.e., nurse tanks, as specified in 49 CFR 173.315(m)).
- (3) Include certain manufacturers and reconditioners of packagings used in the transportation of hazardous materials.
- (4) Include all transport vehicles and freight containers which contain more than 400 kg (882 pounds) of a hazardous material.

This alternative was not selected primarily because it would place an even greater burden on small shippers and carriers, thereby increasing the inequity that exists in the current fee structure. Moreover, in some cases, this may not add a significant number of persons required to register.

For example, RSPA recently proposed [Docket HM-206, NPRM; 59 FR 41848; August 15, 1994] several improvements to the existing hazard communications system that were identified as necessary by commenters to the ANPRM [Docket HM-206; 57 FR 24532; June 9, 1992], the National Academy of Sciences in its Special Report 239, "Hazardous Materials Shipment Information for Emergency Response", and agency initiative. RSPA is proposing to lower from 2,268 kg (5,000 pounds) to 1,000 kg (2,205 pounds) the quantity for specific hazard class placarding when one category of material is loaded on a transport vehicle at one loading facility. However, it seems probable that most persons who offer or transport at least one shipment per year of more than 1,000 kg of one class of a hazardous material will offer or transport at least a similar shipment that exceeds 2,268 kg. If so, lowering the threshold quantity, for shipments of hazardous materials in non-bulk packagings, would not result in a significant number of new persons having to file a registration statement.

However, RSPA is proposing, in this rulemaking, to broaden the scope of materials extremely toxic by inhalation covered by the registration requirement, to include every "material poisonous by inhalation" (PIH) as defined in 49 CFR 171.8 that meets the criteria for Hazard Zone A (extremely toxic). This change would add several PIH materials that are listed in the Hazardous Materials Table

in 49 CFR 172.101 as a Class 3, Class 8, Division 4.2 or Division 5.1 hazardous material. It is not likely that this change will add a substantial number of persons that are required to register.

Commenters are encouraged to provide specific comments as to whether the registration requirement should be expanded in any way, including the desirability of making it parallel to the proposed placarding requirement, i.e., to 1,000 kg or more of any single class. Commenters should also provide information on the effect of any such expansion of the registration requirement, including an estimate of the number of additional persons that would be required to register.

#### *C. Fee Reductions in Subsequent Years*

Under 49 U.S.C. 5108(g)(2)(B), adjustments in registration fee levels are required if there is an uncommitted balance in the registration fee account. Therefore, if any new fee levels are adopted and result in the collection of fees significantly greater than the approximately \$19 million authorized by 49 U.S.C. 5116 and 5127, RSPA proposes to make proportional reductions, on a year-by-year basis, in the registration fees within the statutory limits (\$250.00–\$5,000.00). This would be announced by publication of a notice in the **Federal Register** at least 60 days prior to the beginning of the registration year.

### **IX. An Industry Perspective**

During May 1994, an industry working group was organized by the Hazardous Materials Advisory Council to review the current registration program and to make recommendations to RSPA in regard to the future of the program. Recommendations, dated September 23, 1994, were received and are available in the public docket. They will be reviewed and considered during this proceeding.

### **X. Section-By-Section Summary**

#### *Section 107.601*

In paragraph (c), the entry for materials extremely toxic by inhalation would be revised to include every "material poisonous by inhalation," as defined in 49 CFR 171.8, that meets the criteria for Hazard Zone A. This proposed requirement effectively captures poison inhalation hazard, Hazard Zone A, materials in divisions other than Division 2.3 and Division 6.1 (e.g., isobutyl isocyanate, a Class 3 hazardous material). The Hazard Zone A assignment for isobutyl isocyanate, and certain other materials, is specifically communicated through reference to

Special Provision 1 in column 7 of the Hazardous Materials Table.

#### *Section 107.606*

This proposed revision would remove the July 1, 1996 limitation on the exception for foreign offerors. In paragraph (b), RSPA proposes to apply the registration and fee payment requirements to foreign offerors domiciled in any country that requires offerors domiciled in the United States to file a registration statement or pay a fee. See also the discussion in Section III.B. of this preamble.

#### *Section 107.612*

In this proposed rule, all persons currently required to file a registration statement with RSPA would continue to be assessed an annual registration fee, at a minimum, of \$250.00, plus a \$50.00 processing fee, for a total of \$300.00. In addition, RSPA is proposing graduated registration fee levels, up to a maximum of \$5,000.00 (plus the \$50.00 processing fee), to which certain registrants would be subject on the basis of having offered or transported during the prior calendar year: a highway route controlled quantity of Class 7 (radioactive) materials; certain size shipments of Division 1.1, 1.2 or 1.3 (explosive) materials, or materials extremely toxic by inhalation; or a specified number of different bulk packagings.

The entire schedule of fees appears in a table within paragraph (a). The fees are keyed to the five activities for which registration is mandatory, and, where appropriate, specified in increments generally related to the quantity of hazardous material offered for transportation or transported.

In paragraph (b), RSPA is proposing a provision to proportionally reduce fees in subsequent registration years based on uncommitted balances, if any, in the grant account.

#### *Section 107.616*

Paragraphs (d)(2) and (d)(3) would be revised to provide procedures for the payment of any applicable increased fee required by the proposed amendment to § 107.612 when submitting a registration statement under the provisions of an expedited registration.

### **XI. Rulemaking Analyses and Notices**

#### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is not considered a major rule under the Regulatory Policies and Procedures of

the Department of Transportation [44 FR 11034] because its economic impact on certain hazardous materials offerors and transporters is not expected to exceed \$100 million annually. This proposal is expected to generate additional registration fees of approximately \$12 million per year. A preliminary regulatory evaluation is available for review in the Docket. Because the statute mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fee within the statutory range for each person subject to the registration program. The proposed fees are not related to the cost of RSPA's hazardous materials safety programs. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency response services provided by public sector resources, should an accident or incident occur. The fees are also related to expenses incurred by State, Indian tribal, and local hazardous materials emergency preparedness and response activities.

#### B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under 49 U.S.C. 5102, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

#### C. Regulatory Flexibility Act

This proposed rule maintains the minimum fee requirement for small shippers and carriers of hazardous materials who are subject to the registration requirement. Therefore, I

certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

#### D. Paperwork Reduction Act

Under 49 U.S.C. 5108, the information management requirements of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*] do not apply to this proposed rule.

#### E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 107 is proposed to be amended as follows:

### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.601, paragraph (c) would be revised to read as follows:

#### § 107.601 Applicability.

\* \* \* \* \*

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., "material poisonous by inhalation," as defined in § 171.8 of this chapter, that meets a criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this chapter);

\* \* \* \* \*

3. Section 107.606 would be revised to read as follows:

#### § 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An employee of any of those agencies in paragraphs (a)(1) through (a)(3) of this section with respect to the employee's official duties.

(5) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual agreement).

(6) A person domiciled outside the United States who offers, solely from a location outside the United States, hazardous materials for transportation in commerce, *provided* that the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file a registration statement or to pay a registration fee.

(b) Upon making a determination that persons domiciled in the United States who offer hazardous materials for transportation to a foreign country solely from places in the United States must file registration statements, or pay fees, the U.S. Competent Authority will provide notice of such determination directly to the Competent Authority of that foreign country, and by publication in the **Federal Register**. Persons affected by this determination shall file a registration statement and pay the required fee no later than 60 days following publication of the determination in the **Federal Register**.

4. Section 107.612 would be revised to read as follows:

#### § 107.612 Amount of fee.

(a) Each person subject to the requirements of this subpart shall report its activities and pay the highest single (not aggregate) annual fee (which includes a \$50.00 processing fee) that reflects the type and quantity of hazardous materials offered for transportation or transported into, from, or within the United States during the prior calendar year, as specified in the following table:

## REGISTRATION FEE TABLE FOR HAZARDOUS MATERIALS ACTIVITIES

Type of hazardous material	Quantity	Total annual fee
<i>Radioactive Material.</i> A highway route controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403(l) of this chapter.	One (1) or more packages .....	\$5,050.00
<i>Explosive Material.</i> A Division 1.1, 1.2 or 1.3 explosive material, as defined in § 173.50 of this chapter, in a motor vehicle, rail car or freight container.	10,000 kg (22,046 pounds) or more .....	5,050.00
	1,000 kg (2,205 pounds) or more but less than 10,000 kg (22,046 pounds).	2,550.00
	More than 25 kg (55 pounds) but less than 1,000 kg (2,205 pounds).	300.00
<i>Extremely Toxic by Inhalation.</i> A "material poisonous by inhalation," as defined in § 171.8 of this chapter, that meets the criteria for "hazard zone A" (see §§ 173.116(a) and 173.133(a) of this chapter) in a packaging having a capacity of—.	13,248 L (3,500 gallons) or more .....	5,050.00
	More than 450 L (119 gallons) but less than 13,248 L (3,500 gallons).	2,550.00
	More than 1 L (1.06 quart) but less than or equal to 450 L (119 gallons).	300.00
<i>Hazardous Material in a Bulk Packaging.</i> A hazardous material in a bulk packaging, as defined in § 171.8 of this chapter, having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids and the number of different packagings used during the year is—.	8 or more different tank cars, or 24 or more different other bulk packagings.	5,050.00
	4–7 different tank cars, or 12–23 different other bulk packagings.	2,550.00
	1–3 different tank cars, or 1–11 different other bulk packagings	500.00
<i>Placarded Hazardous Material That is Not in a Bulk Packaging .</i>	One (1) or more shipments of hazardous materials in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous material for which placarding of a vehicle, rail car, or freight container is required for that class, under provisions of subpart F of part 172 of this chapter.	300.00
During the prior calendar year did not engage in any of the above activities.	Will offer for transportation or transport during this registration year a hazardous material as specified above.	300.00

(b) For any registration year the Administrator may reduce, in a proportional amount, all the amounts greater than \$300.00 indicated in the registration fee table in paragraph (a) of this section to reflect any uncommitted balance in the account established under 49 U.S.C. 5116. Notice of such adjustments will be published in the **Federal Register** no later than April 1 prior to the beginning of the registration year affected.

5. In § 107.616, paragraphs (d)(2) and (d)(3) would be revised to read as follows:

**§ 107.616 Payment procedures.**

\* \* \* \* \*

(d) \* \* \*

(2) Pay \$350.00 (including the \$50.00 processing fee and an additional \$50.00 expedited handling fee); and

(3) Submit all of the following to RSPA before the expiration date of the temporary registration number:

(i) A completed registration statement;

(ii) Proof of \$350.00 payment; and

(iii) Payment of any balance of the annual fee (as specified in § 107.612) in excess of \$300.00.

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**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

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